

Order

Michigan Supreme Court
Lansing, Michigan

March 20, 2019

Bridget M. McCormack,
Chief Justice

157509

David F. Viviano,
Chief Justice Pro Tem

In re Attorney Fees of MITCHELL T. FOSTER

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 157509
COA: 334309
Oakland CC: 2015-253430-FH

DAVID JOHN BERNARD,
Defendant,

and

MITCHELL T. FOSTER,
Appellant.

On order of the Court, the application for leave to appeal the February 27, 2018 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals. The Oakland Circuit Court abused its discretion by denying Foster's request for any extraordinary fees for time spent consulting with defense expert Gerald Gabriel. Although the defendant ultimately pled no contest and it is not clear how beneficial Gabriel's consultation was to the defense, it was outside the range of principled outcomes for the trial court to deny reimbursement altogether for time Foster spent consulting with Gabriel. As dissenting Judge Gleicher observed, "Foster was obligated to review more than 2,000 pages of financial data and the preliminary examination testimony given by the prosecution's expert," a record that is "outside the realm of most criminal prosecutions." And the trial judge granted the defense \$12,500 specifically for the purpose of Foster being able to consult with Gabriel. We REMAND this case to the Oakland Circuit Court for further proceedings on extraordinary fees in light of this order. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.



a0313p

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 20, 2019

Clerk